the flour to the defendant. Being unable to dispose of it there, he reshipped the flour to New York at considerable expense. The plaintiff could have disposed of the flour at the point of shipment. *Held,* that the seller could treat the notice of repudiation by the buyer as inoperative and continue performance, holding the buyer responsible for all loss resulting. *Barber Milling Co. v. Leichthammer* (Pa., 1922), 116 Atl. 677.

Upon principle, the plaintiff should have been allowed to recover only the difference between the sale price and the contract price at the time of performance, this being the usual measure of damages in such cases. *Rhodes v. Cleveland R. M. Co.,* 17 Fed. 426. Some few cases require the injured party to make a forward contract. *Roth v. Taysen,* 73 L. T. 628 (but see *Roper v. Johnson,* L. R. 8 C. P. 167); *Roehm v. Horst,* 178 U. S. 1 (*semble*). The authorities in this country are *contra. Kadish v. Young,* 108 Ill. 170; *Leigh v. Paterson,* 8 Taunt. 540; *Brown v. Muller,* L. R. 7 Ex. 319. Where the results of such a contract are uncertain, as in the case of a rising or falling market, it seems clear that the plaintiff should not be forced to assume the burden of making a forward contract and thus put himself at the mercy of a jury. See *Missouri Furnace Co. v. Cochran,* 8 Fed. 463. In allowing the plaintiff to recover for all of the shipping expenses the court is in line with those English decisions which follow the *dictum* of Cockburn, C. J., in *Frost v. Knight,* L. R. 7 Ex. 111, and has some decisions in its support in the United States. *Roebling's Sons Co. v. Lock Stitch Fence Co.,* 130 Ill. 660, 22 N. E. 518. In applying this doctrine the foregoing cases seem to have lost sight of the rule that "the party injured must mitigate the damages as much as he can without injury to himself." *Clark v. Marsiglia,* 1 Denio (N. Y.) 317, 43 Am. Dec. 670. The weight of authority supports the latter doctrine, although it does not require the innocent party to take a chance of injury to self by making a forward contract. *Ward v. American Health Food Co.,* 119 Wis. 12; *Hosmer v. Wilson,* 7 Mich. 293; *Cumberland Mfg. Co. v. Wheaton,* 208 Mass. 425; *Johnson v. Meeker,* 96 N. Y. 93. The prevailing rule of damages allows compensation to the injured party only for the loss necessarily caused by the defendant's breach. *Kingman v. Western Mfg. Co.,* 92 Fed. 486. But in the principal case all the damages were not necessarily caused by the defendant's breach, inasmuch as the plaintiff could have sold the flour at shipping point at time of delivery and avoided the shipping costs.

CONTRACTS—RESTRAINT OF TRADE—TERRITORIAL LIMITATION.—Defendant sold his grocery business in Porterdale, Ga., to the plaintiffs. One of the terms of the contract of sale was that "the said first party is not to go into business in competition with the said second parties." The Civil Code of Georgia, 1910, § 4253, makes a contract in general restraint of trade unenforceable. In a suit to enjoin the defendant from engaging in the grocery business in Porterdale, *held,* the contract was unenforceable as one in general restraint of trade. *Bonner v. Bailey* (Ga., 1922), 110 S. E. 875.

With the relaxation of the rigor of the ancient common law rule, that all contracts in restraint of trade were void, there became established the

distinction between partial and general restraints of trade. *Mitchel v. Reynolds,* 1 P. Wm. 181. Partial restraints, those limited with respect to place, if reasonably necessary for the protection of the purchaser, were sustained. A further development of the rule in England saw the terms partial and general lose their territorial significance, and the adoption of the test, what is a reasonable restraint under all the circumstances of the case. *Nordenfelt v. Maxim Nordenfelt Co.,* 19 App. Cas. 535. The tendency of modern decisions is to adopt the rule of the *Nordenfelt* case. For a discussion of the two rules and a full citation of authorities, see 8 MICH. L. REV. 298 (article), 417; 9 MICH. L. REV. 68. The distinction between general and partial restraints is still adhered to in some jurisdictions, and in Georgia has received statutory declaration. In its application of this rule the court in the principal case attaches great significance to the omission of the contract to state a territorial limitation expressly and concludes that the contract is one in general restraint of trade. Such a conclusion need not necessarily follow. The problem in any case is essentially one of construction, *Rakestraw v. Lanier,* 104 Ga. 188, and it is at least arguable that the language of the contract in the principal case, when properly interpreted in the light of the circumstances surrounding the contracting parties, does impose a territorial limitation commensurate with the extent of the business sold. Relief was granted in the following cases where the problem was the same as that of the principal case and the language of the contracts more unfavorable to the plaintiff: *Hubbard v. Miller,* 27 Mich. 15 (not to engage in the business of well-driving); *Moore & Handley Hardware Co. v. Towers Hardware Co.,* 87 Ala. 206 (not to handle plow blades). See also *Warfield v. Booth,* 33 Md. 63; note to *Nicholson v. Ellis,* 24 L. R. A. (N. S.) 942.

COVENANT RUNNING WITH THE LAND—COVENANT AGAINST INCUMBRANCE. —By an Idaho statute, "grant," as used in any conveyance of an interest in land, implies a covenant against incumbrances created or suffered by the grantor to the grantee, his heirs and assigns. The complainant "granted" land on which there was a tax lien to one of the respondents, who gave back a mortgage on it in part payment. The grantee then conveyed to the other respondents, who were forced to discharge the tax lien to save the land. The first grantor sued to foreclose his mortgage, claiming that the interest had not been paid according to the agreement. The respondents contended that they were entitled to credit for the amount paid as taxes. *Held,* that the covenant against incumbrances ran with the land and that the respondents were entitled to credit for the amount that they had been forced to pay because of its breach. *Brinton v. Johnson et al.* (Idaho, 1922), 208 Pac. 1028. It was also *held,* in a suit following, that the remote grantee could recover from the grantor the amount of taxes paid. *Carssow v. Brinton* (Idaho, 1922), 208 Pac. 1031.

The court based its holdings on the fact that the Code had made choses in action assignable, and therefore the broken covenant could run with the land. It also declared that the express words of the statute—"to the grantee, his heirs and assigns"—covered the case. In the United States a covenant